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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation and Petition to
12 Revoke Probation Against,

13 **SOL GIROUARD**

14 **9260 Towne Centre Drive, Apt. 27**
15 **San Diego, CA 92121-3008**
Registered Nurse License No. 455235

16 Respondent
17
18
19

Case No. 2010-420

**ACCUSATION AND PETITION TO
REVOKE PROBATION**

20 Complainant alleges:

21 **PARTIES**

22 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation and Petition to
23 Revoke Probation solely in her official capacity as the Interim Executive Officer of the Board of
24 Registered Nursing, Department of Consumer Affairs.

25 2. On or about August 31, 1990, the Board of Registered Nursing issued Registered
26 Nurse License Number 455235 to Sol Girouard (Respondent). The Registered Nurse License was
27 in effect at all times relevant to the charges brought herein and will expire on January 31, 2012,
28 unless renewed.

3. In a disciplinary action entitled "In the Matter of Accusation against Sol Girouard," Case No. 2006-175, the Board of Registered Nursing issued a decision, effective March 9, 2007, in which Respondent's Registered Nurse License was revoked. However, the revocation was stayed and Respondent was placed on probation for a period of three (3) years with certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated by reference.

JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 118, subdivision (b), of the Code provides that the suspension or expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

7. Section 482 of the Code states:

"Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

"(a) Considering the denial of a license by the board under Section 480; or

"(b) Considering suspension or revocation of a license under Section 490.

"Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee."

8. Section 490 of the Code states:

"(a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a

1 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
2 or profession for which the license was issued.

3 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
4 discipline a licensee for conviction of a crime that is independent of the authority granted under
5 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
6 of the business or profession for which the licensee's license was issued.

7 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
8 conviction following a plea of nolo contendere. Any action that a board is permitted to take
9 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
10 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
11 made suspending the imposition of sentence, irrespective of a subsequent order under the
12 provisions of Section 1203.4 of the Penal Code.

13 "(d) The Legislature hereby finds and declares that the application of this section has been
14 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.
15 4th 554, and that the holding in that case has placed a significant number of statutes and
16 regulations in question, resulting in potential harm to the consumers of California from licensees
17 who have been convicted of crimes. Therefore, the Legislature finds and declares that this section
18 establishes an independent basis for a board to impose discipline upon a licensee, and that the
19 amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not
20 constitute a change to, but rather are declaratory of, existing law."

21 9. Section 493 of the Code states:

22 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
23 the department pursuant to law to deny an application for a license or to suspend or revoke a
24 license or otherwise take disciplinary action against a person who holds a license, upon the
25 ground that the applicant or the licensee has been convicted of a crime substantially related to the
26 qualifications, functions, and duties of the licensee in question, the record of conviction of the
27 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
28 and the board may inquire into the circumstances surrounding the commission of the crime in

1 order to fix the degree of discipline or to determine if the conviction is substantially related to the
2 qualifications, functions, and duties of the licensee in question.

3 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
4 'registration.'"

5 10. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
6 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
7 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
8 Nursing Practice Act.

9 11. Section 2761 of the Code states, in pertinent part:

10 "The board may take disciplinary action against a certified or licensed nurse or deny an
11 application for a certificate or license for any of the following:

12 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

13 "..."

14 "(f) Conviction of a felony or of any offense substantially related to the qualifications,
15 functions, and duties of a registered nurse, in which event the record of the conviction shall be
16 conclusive evidence thereof.

17 "..."

18 ACCUSATION

19 FIRST CAUSE FOR DISCIPLINE

20 (January 23, 2009, Conviction for Petty Theft in or about 2007)

21 12. Respondent is subject to disciplinary action pursuant to Code sections 490 and
22 4301(l) in that she was convicted of a crime substantially related to the qualifications, functions,
23 and duties of a registered nurse. The circumstances are as follows:

24 a. On or about January 23, 2009, Respondent pled guilty to a violation of Penal Code
25 section 484/488/666, petty theft with a prior, a misdemeanor, in *People of the State of California*
26 *v. Sol Girouard*, San Diego County Superior Court Case No. M024893.

27 b. Respondent was sentenced on January 28, 2009, and placed on 3 years probation.
28 Conditions of probation included 120 days custody, stayed, participation in a volunteer work

1 program at a non-profit organization for 80 hours, and completion of a shoplifter's course. She
2 was ordered to stay away from all Nordstrom stores during her probation, which ends on January
3 27, 2012.

4 SECOND CAUSE FOR DISCIPLINE

5 (2004 Conviction for Petty Theft)

6 13. Respondent is subject to disciplinary action pursuant to Code sections 490 and
7 4301(l) in that she was convicted of a crime substantially related to the qualifications, functions,
8 and duties of a registered nurse. The circumstances are as follows:

9 a. Respondent was convicted of a violation of petty theft (Penal Code section 484/488)
10 in 2004 in *People of the State of California v. Sol Girouard*, San Diego County Superior Court
11 Case No. M917365.

12 PETITION TO REVOKE PROBATION

13 14. Grounds exist for revoking the probation and reimposing the order of revocation of
14 Registered Nurse License No. 455235 issued to Respondent. The Board's disciplinary order
15 effective on March 9, 2007, contained Probation Condition 13, Violation of Probation, which
16 provides as follows:

17 "If Respondent violates the conditions of his probation, the Board
18 after giving Respondent notice and an opportunity to be heard, may set
19 aside the stay order and impose the stayed discipline (revocation/suspension)
of Respondent's license.

20 "If during the period of probation, an accusation or petition to revoke
21 probation has been filed against Respondent's license or the Attorney General's
22 Office has been requested to prepare an accusation or petition to revoke
23 probation against Respondent's license, the probationary period shall
automatically be extended and shall not expire until the accusation or petition
has been acted upon by the Board."

24 15. Respondent has violated the conditions of her probation as set forth in the following
25 paragraphs.

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1 FIRST CAUSE TO REVOKE PROBATION

2 (Failure to Obey All Laws)

3 16. At all times after the effective date of Respondent's probation, Condition 1 stated:

4 "Obey All Laws. Respondent shall obey all federal, state
5 and local laws. A full and detailed account of any and all violations
6 of law shall be reported by Respondent to the Board in writing within
7 seventy-two (72) hours of occurrence. To permit monitoring of
8 compliance with this condition, Respondent shall submit completed
9 fingerprint forms and fingerprint fees within 45 days of the effective
10 date of the decision, unless previously submitted as part of the
11 licensure application process.

12 "Criminal Court Orders. If Respondent is under criminal
13 court orders, including probation or parole, and the order is violated,
14 this shall be deemed a violation of these probation conditions, and may
15 result in the filing of an accusation and/or petition to revoke probation."

16 17 Respondent's probation is subject to discipline because she failed to comply with
17 Probation Condition 1, referenced above, in that she was convicted of a violation of Petty Theft
18 w/Prior (Penal Code section 484/488) in *People of the State of California v. Sol Girouard*, San
19 Diego County Superior Court Case No. M024893, as described in paragraph 12, above.

20 SECOND CAUSE TO REVOKE PROBATION

21 (Failure to Comply With Board's Probation Program)

22 18. At all times after the effective date of Respondent's probation, Condition 2 stated:

23 "Comply with the Board's Probation Program. Respondent shall fully
24 comply with the conditions of the Probation Program established by the Board
25 and cooperate with representatives of the Board in its monitoring and
26 investigation of the Respondent's compliance with the Board's Probation
27 Program. Respondent shall inform the Board in writing within no more
28 than 15 days of any address change and shall at all time maintain an
active, current license status with the Board, including during any period
of suspension.

"Upon successful completion of probation, Respondent's license
shall be fully restored."

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1 19. Respondent's probation is subject to revocation because she failed to comply with
2 Probation Condition 2, in that she failed to disclose her failure to comply with Probation
3 Condition 1, failure to obey laws, and Probation Condition 5, failure to submit written reports
4 containing statements relating to Respondent's compliance with all conditions of probation

5 THIRD CAUSE TO REVOKE PROBATION

6 (Failure to Submit Written Reports)

7 20. At all times after the effective date of Respondent's probation, Condition 5 stated:

8 **"Submit Written Reports.** Respondent, during the period of probation,
9 shall submit or cause to be submitted such written reports/declarations and
10 verification of actions under penalty of perjury, as required by the Board.
11 These reports/declarations shall contain statements relative to Respondent's
12 Compliance with all the conditions of the Board's Probation Program.
13 Respondent shall immediately execute all release of information forms as
14 may be required by the Board or its representatives.

15 "Respondent shall provide a copy of this Decision to the nursing
16 regulatory agency in every state and territory in which he has a registered
17 nurse license."

18 21. Respondent's probation is subject to revocation because she failed to comply with
19 Probation Condition 5, referenced above. Respondent failed to disclose on her written report to
20 the Board that on January 28, 2009, she was convicted of theft and placed on criminal probation
21 for three (3) years.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Registered Nursing issue a decision:

25 1. Revoking the probation that was granted by the Board of Registered Nursing in Case
26 No. 2006-175 and imposing the disciplinary order that was stayed thereby revoking Registered
27 Nurse License No. 455235 issued to Sol Girouard;

28 2. Revoking or suspending Registered Nurse License No. 455235, issued to Sol
Girouard;

3. Ordering Sol Girouard to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and

4. Taking such other and further action as deemed necessary and proper.

DATED:

3/8/10

for LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2006-175

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

SOL GIROUARD
9260 Towne Center Drive, Apt. 27
San Diego, CA 92121-3008

Registered Nurse License No. 455235

Respondent.

Case No. 2006-175

OAH No. L-2006050279

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board, as its Decision in this matter.

This Decision shall become effective on MARCH 9, 2007.

It is so ORDERED FEBRUARY 7, 2007.

La Francine W Tate

FOR THE BOARD OF REGISTERED NURSING

1 BILL LOCKYER, Attorney General
of the State of California
2 MARGARET A. LAFKO
Supervising Deputy Attorney General
3 JAMES M. LEDAKIS, State Bar No. 132645
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4 California Department of Justice
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8

9 Attorneys for Complainant

10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2006-175

13 SOL GIROUARD
14 9260 Towne Center Drive, Apt. 27
San Diego, CA 92121-3008

OAH No. L-2006050279

15 Registered Nurse License No. 455235

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

16 Respondent.
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18 In the interest of a prompt and speedy settlement of this matter, consistent with the
19 public interest and the responsibility of the Board of Registered Nursing (Board), the parties
20 hereby agree to the following Stipulated Settlement and Disciplinary Order which will be
21 submitted to the Board for approval and adoption as the final disposition of the Accusation.

22 **PARTIES**

23 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
24 the Board of Registered Nursing. She brought this action solely in her official capacity and is
25 represented in this matter by Bill Lockyer, Attorney General of the State of California, by James
26 M. Ledakis, Deputy Attorney General.

2. SOL GIROUARD (Respondent) is represented in this proceeding by attorney William R. Winship, Jr., whose address is 591 Camino De La Reina, Suite 1015 San Diego, CA 92108

3. On or about August 31, 1990, the Board of Registered Nursing issued Registered Nurse No. 455235 to Respondent. Said nursing license was in full force and effect at all times relevant to the charges brought in Accusation No. 2006-175 and will expire on January 31, 2007, unless renewed.

JURISDICTION

4. Accusation No. 2006-175 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on April 6, 2006. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 2006-175 is attached as exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 2006-175. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

6. Respondent is fully aware of her legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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CULPABILITY

8. Respondent understands and agrees that the charges and allegations in Accusation No. 2006-175, if proven at a hearing, constitute cause for imposing discipline upon her Registered Nursing license.

9. For the purpose of resolving the Accusation without the expense and uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up her right to contest those charges.

10. Respondent agrees that her Registered Nurse is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

RESERVATION

11. The admissions made by Respondent herein are only for the purposes of this proceeding, or any other proceedings in which the Board or other professional licensing agency is involved, and shall not be admissible in any other criminal or civil proceeding.

CONTINGENCY

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Registered Nurse License No. 455235 issued to Respondent is revoked. However, the revocation is stayed and Respondent is placed on probation for three (3) years on the following terms and conditions.

Severability Clause. Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

1. **Obey All Laws.** Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

Criminal Court Orders: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

2. **Comply with the Board's Probation Program.** Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

1 3. **Report in Person.** Respondent, during the period of probation, shall
2 appear in person at interviews/meetings as directed by the Board or its designated
3 representatives.

4 4. **Residency, Practice, or Licensure Outside of State.** Periods of
5 residency or practice as a registered nurse outside of California shall not apply toward a reduction
6 of this probation time period. Respondent's probation is tolled, if and when he resides outside of
7 California. Respondent must provide written notice to the Board within 15 days of any change of
8 residency or practice outside the state, and within 30 days prior to re-establishing residency or
9 returning to practice in this state.

10 Respondent shall provide a list of all states and territories where he has ever been
11 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
12 provide information regarding the status of each license and any changes in such license status
13 during the term of probation. Respondent shall inform the Board if he applies for or obtains a
14 new nursing license during the term of probation.

15 5. **Submit Written Reports.** Respondent, during the period of probation,
16 shall submit or cause to be submitted such written reports/declarations and verification of actions
17 under penalty of perjury, as required by the Board. These reports/declarations shall contain
18 statements relative to Respondent's compliance with all the conditions of the Board's Probation
19 Program. Respondent shall immediately execute all release of information forms as may be
20 required by the Board or its representatives.

21 Respondent shall provide a copy of this Decision to the nursing regulatory agency
22 in every state and territory in which he has a registered nurse license.

23 6. **Function as a Registered Nurse.** Respondent, during the period of
24 probation, shall engage in the practice of registered nursing in California for a minimum of 24
25 hours per week for 6 consecutive months or as determined by the Board.

26 For purposes of compliance with the section, "engage in the practice of registered
27 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
28 work in any non-direct patient care position that requires licensure as a registered nurse.

1 The Board may require that advanced practice nurses engage in advanced practice
2 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the
3 Board.

4 If Respondent has not complied with this condition during the probationary term,
5 and Respondent has presented sufficient documentation of his good faith efforts to comply with
6 this condition, and if no other conditions have been violated, the Board, in its discretion, may
7 grant an extension of Respondent's probation period up to one year without further hearing in
8 order to comply with this condition. During the one year extension, all original conditions of
9 probation shall apply.

10 **7. Employment Approval and Reporting Requirements.** Respondent
11 shall obtain prior approval from the Board before commencing or continuing any employment,
12 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
13 performance evaluations and other employment related reports as a registered nurse upon request
14 of the Board.

15 Respondent shall provide a copy of this Decision to his employer and immediate
16 supervisors prior to commencement of any nursing or other health care related employment.

17 In addition to the above, Respondent shall notify the Board in writing within
18 seventy-two (72) hours after he obtains any nursing or other health care related employment.
19 Respondent shall notify the Board in writing within seventy-two (72) hours after he is terminated
20 or separated, regardless of cause, from any nursing, or other health care related employment with
21 a full explanation of the circumstances surrounding the termination or separation.

22 **8. Supervision.** Respondent shall obtain prior approval from the Board
23 regarding Respondent's level of supervision and/or collaboration before commencing or
24 continuing any employment as a registered nurse, or education and training that includes patient
25 care.

26 Respondent shall practice only under the direct supervision of a registered nurse
27 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
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1 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
2 are approved.

3 Respondent's level of supervision and/or collaboration may include, but is not
4 limited to the following:

5 (a) Maximum - The individual providing supervision and/or collaboration is
6 present in the patient care area or in any other work setting at all times.

7 (b) Moderate - The individual providing supervision and/or collaboration is in
8 the patient care unit or in any other work setting at least half the hours Respondent works.

9 (c) Minimum - The individual providing supervision and/or collaboration has
10 person-to-person communication with Respondent at least twice during each shift worked.

11 (d) Home Health Care - If Respondent is approved to work in the home health
12 care setting, the individual providing supervision and/or collaboration shall have person-to-
13 person communication with Respondent as required by the Board each work day. Respondent
14 shall maintain telephone or other telecommunication contact with the individual providing
15 supervision and/or collaboration as required by the Board during each work day. The individual
16 providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-
17 site visits to patients' homes visited by Respondent with or without Respondent present.

18 9. **Employment Limitations.** Respondent shall not work for a nurse's
19 registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a
20 traveling nurse, or for an in-house nursing pool.

21 Respondent shall not work for a licensed home health agency as a visiting nurse
22 unless the registered nursing supervision and other protections for home visits have been
23 approved by the Board. Respondent shall not work in any other registered nursing occupation
24 where home visits are required.

25 Respondent shall not work in any health care setting as a supervisor of registered
26 nurses. The Board may additionally restrict Respondent from supervising licensed vocational
27 nurses and/or unlicensed assistive personnel on a case-by-case basis.

28 Respondent shall not work as a faculty member in an approved school of nursing

1 or as an instructor in a Board approved continuing education program.

2 Respondent shall work only on a regularly assigned, identified and predetermined
3 worksite(s) and shall not work in a float capacity.

4 If Respondent is working or intends to work in excess of 40 hours per week, the
5 Board may request documentation to determine whether there should be restrictions on the hours
6 of work.

7 10. **Complete a Nursing Course(s).** Respondent, at his own expense, shall
8 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
9 than six months prior to the end of his probationary term.

10 Respondent shall obtain prior approval from the Board before enrolling in the
11 course(s). Respondent shall submit to the Board the original transcripts or certificates of
12 completion for the above required course(s). The Board shall return the original documents to
13 Respondent after photocopying them for its records.

14 11. **Cost Recovery.** Respondent shall pay to the Board costs associated with
15 its investigation and enforcement pursuant to Business and Professions Code section 125.3 in the
16 amount of \$3,800.00. Respondent shall be permitted to pay these costs in a payment plan
17 approved by the Board, with payments to be completed no later than three months prior to the
18 end of the probation term.

19 If Respondent has not complied with this condition during the probationary term,
20 and Respondent has presented sufficient documentation of his good faith efforts to comply with
21 this condition, and if no other conditions have been violated, the Board, in its discretion, may
22 grant an extension of Respondent's probation period up to one year without further hearing in
23 order to comply with this condition. During the one year extension, all original conditions of
24 probation will apply.

25 12. **Violation of Probation.** If Respondent violates the conditions of his
26 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
27 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
28 license.

1 If during the period of probation, an accusation or petition to revoke probation has
2 been filed against Respondent's license or the Attorney General's Office has been requested to
3 prepare an accusation or petition to revoke probation against Respondent's license, the
4 probationary period shall automatically be extended and shall not expire until the accusation or
5 petition has been acted upon by the Board.

6 **13. License Surrender.** During Respondent's term of probation, if he ceases
7 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
8 probation, Respondent may surrender his license to the Board. The Board reserves the right to
9 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
10 take any other action deemed appropriate and reasonable under the circumstances, without
11 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
12 will no longer be subject to the conditions of probation.

13 Surrender of Respondent's license shall be considered a disciplinary action and
14 shall become a part of Respondent's license history with the Board. A registered nurse whose
15 license has been surrendered may petition the Board for reinstatement no sooner than the
16 following minimum periods from the effective date of the disciplinary decision:

17 (1) Two years for reinstatement of a license that was surrendered for any
18 reason other than a mental or physical illness; or

19 (2) One year for a license surrendered for a mental or physical illness.

20 **14. Physical Examination.** Within 45 days of the effective date of this
21 Decision, Respondent, at his expense, shall have a licensed physician, nurse practitioner, or
22 physician assistant, who is approved by the Board before the assessment is performed, submit an
23 assessment of the Respondent's physical condition and capability to perform the duties of a
24 registered nurse, including a determination as set forth below in the paragraph entitled, "Rule Out
25 Substance Abuse Assessment." Such an assessment shall be submitted in a format acceptable to
26 the Board. If medically determined, a recommended treatment program will be instituted and
27 followed by the Respondent with the physician, nurse practitioner, or physician assistant
28 providing written reports to the Board on forms provided by the Board.

1 If Respondent is determined to be unable to practice safely as a registered nurse,
2 the licensed physician, nurse practitioner, or physician assistant making this determination shall
3 immediately notify the Board and Respondent by telephone, and the Board shall request that the
4 Attorney General's office prepare an accusation or petition to revoke probation. Respondent
5 shall immediately cease practice and shall not resume practice until notified by the Board.
6 During this period of suspension, Respondent shall not engage in any practice for which a license
7 issued by the Board is required until the Board has notified Respondent that a medical
8 determination permits Respondent to resume practice. This period of suspension will not apply
9 to the reduction of this probationary time period.

10 If Respondent fails to have the above assessment submitted to the Board within
11 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
12 practice until notified by the Board. This period of suspension will not apply to the reduction of
13 this probationary time period. The Board may waive or postpone this suspension only if
14 significant, documented evidence of mitigation is provided. Such evidence must establish good
15 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
16 provided. Only one such waiver or extension may be permitted.

17 **15. Mental Health Examination.** Respondent shall, within 45 days of the
18 effective date of this Decision, have a mental health examination including psychological testing
19 as appropriate to determine her capability to perform the duties of a registered nurse, including a
20 determination as set forth in the paragraph entitled, "Rule Out Substance Abuse Assessment."
21 The examination will be performed by a psychiatrist, psychologist or other licensed mental health
22 practitioner approved by the Board. The examining mental health practitioner will submit a
23 written report of that assessment and recommendations to the Board. All costs are the
24 responsibility of Respondent. Recommendations for treatment, therapy or counseling made as a
25 result of the mental health examination will be instituted and followed by Respondent.

26 If Respondent is determined to be unable to practice safely as a registered nurse,
27 the licensed mental health care practitioner making this determination shall immediately notify
28 the Board and Respondent by telephone, and the Board shall request that the Attorney General's

1 office prepare an accusation or petition to revoke probation. Respondent shall immediately cease
2 practice and may not resume practice until notified by the Board. During this period of
3 suspension, Respondent shall not engage in any practice for which a license issued by the Board
4 is required, until the Board has notified Respondent that a mental health determination permits
5 Respondent to resume practice. This period of suspension will not apply to the reduction of this
6 probationary time period.

7 If Respondent fails to have the above assessment submitted to the Board within
8 the 45-day requirement, Respondent shall immediately cease practice and shall not resume
9 practice until notified by the Board. This period of suspension will not apply to the reduction of
10 this probationary time period. The Board may waive or postpone this suspension only if
11 significant, documented evidence of mitigation is provided. Such evidence must establish good
12 faith efforts by Respondent to obtain the assessment, and a specific date for compliance must be
13 provided. Only one such waiver or extension may be permitted.

14 **16. Rule-Out Substance Abuse Assessment.** If the examiner conducting the
15 physical and/or mental health examination determines that the respondent is dependent upon
16 drugs or alcohol, or has had problems with drugs or alcohol (i.e. drug dependence in remission or
17 alcohol dependence in remission), that might reasonably affect the safe practice of nursing, then
18 the respondent must further comply with the following additional terms and conditions of
19 probation.

20 **17. Participate in Treatment/Rehabilitation Program for Chemical**
21 **Dependence.** Respondent, at his expense, shall successfully complete during the probationary
22 period or shall have successfully completed prior to commencement of probation a Board-
23 approved treatment/rehabilitation program of at least six months duration. As required, reports
24 shall be submitted by the program on forms provided by the Board. If Respondent has not
25 completed a Board-approved treatment/rehabilitation program prior to commencement of
26 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
27 a program. If a program is not successfully completed within the first nine months of probation,
28 the Board shall consider Respondent in violation of probation.

1 Based on Board recommendation, each week Respondent shall be required to
2 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
3 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
4 by the Board. If a nurse support group is not available, an additional 12-step meeting or
5 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
6 such attendance to the Board during the entire period of probation. Respondent shall continue
7 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
8 mental health examiner and/or other ongoing recovery groups.

9 18. **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
10 shall completely abstain from the possession, injection or consumption by any route of all
11 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
12 the same are ordered by a health care professional legally authorized to do so as part of
13 documented medical treatment. Respondent shall have sent to the Board, in writing and within
14 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
15 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
16 medication will no longer be required, and the effect on the recovery plan, if appropriate.

17 Respondent shall identify for the Board a single physician, nurse practitioner or
18 physician assistant who shall be aware of Respondent's history of substance abuse and will
19 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
20 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
21 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
22 condition. If any substances considered addictive have been prescribed, the report shall identify a
23 program for the time limited use of any such substances.

24 The Board may require the single coordinating physician, nurse practitioner, or
25 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
26 addictive medicine.

27 /

28 /

1 19. **Submit to Tests and Samples.** Respondent, at his expense, shall
2 participate in a random, biological fluid testing or a drug screening program which the Board
3 approves. The length of time and frequency will be subject to approval by the Board.
4 Respondent is responsible for keeping the Board informed of Respondent's current telephone
5 number at all times. Respondent shall also ensure that messages may be left at the telephone
6 number when he is not available and ensure that reports are submitted directly by the testing
7 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
8 to the Board by the program and Respondent shall be considered in violation of probation.

9 In addition, Respondent, at any time during the period of probation, shall fully
10 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
11 tests and samples as the Board or its representatives may require for the detection of alcohol,
12 narcotics, hypnotics, dangerous drugs, or other controlled substances.

13 If Respondent has a positive drug screen for any substance not legally authorized
14 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
15 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent
16 from practice pending the final decision on the petition to revoke probation or the accusation.
17 This period of suspension will not apply to the reduction of this probationary time period.

18 If Respondent fails to participate in a random, biological fluid testing or drug
19 screening program within the specified time frame, Respondent shall immediately cease practice
20 and shall not resume practice until notified by the Board. After taking into account documented
21 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
22 Board may suspend Respondent from practice pending the final decision on the petition to
23 revoke probation or the accusation. This period of suspension will not apply to the reduction of
24 this probationary time period.

25 20. **Therapy or Counseling Program.** Respondent, at his expense, shall
26 participate in an on-going counseling program until such time as the Board releases him from this
27 requirement and only upon the recommendation of the counselor. Written progress reports from
28 the counselor will be required at various intervals.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, William R. Winship, Jr.. I understand the stipulation and the effect it will have on my Registered Nurse. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board.

DATED: Nov 30, 2006

SOL GIROUARD
SOL GIROUARD (Respondent)

I have read and fully discussed with SOL GIROUARD the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 11/30/06

William R. Winship, Jr.
WILLIAM R. WINSHIP, JR.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: _____

BILL LOCKYER, Attorney General
of the State of California

JAMES M. LEDAKIS
Deputy Attorney General

Attorneys for Complainant

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ACCEPTANCE

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DATED: _____

SOL GIROUARD (Respondent)

I have read and fully discussed with SOL GIROUARD the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: _____

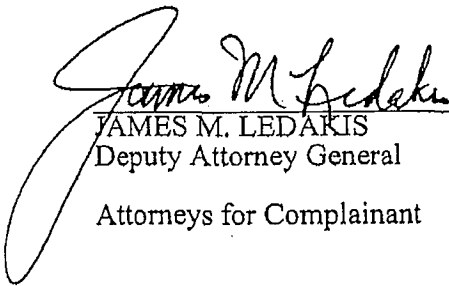
WILLIAM R. WINSHIP, JR.
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board.

DATED: November 30, 2006

BILL LOCKYER, Attorney General
of the State of California



JAMES M. LEDAKIS
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. 2006-175

1 BILL LOCKYER, Attorney General
of the State of California
2 JAMES M. LEDAKIS, State Bar No. 132645
Deputy Attorney General
3 California Department of Justice
110 West "A" Street, Suite 1100
4 San Diego, CA 92101
5 P.O. Box 85266
San Diego, CA 92186-5266
6 Telephone: (619) 645-2105
Facsimile: (619) 645-2061
7
8 Attorneys for Complainant

9
10 **BEFORE THE**
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2006-175

13 **SOL GIROUARD**
9260 Towne Center Drive, Apt. 27
14 San Diego, California 92121-3008

A C C U S A T I O N

15 Registered Nurse License No. 455235

16
17 Respondent.

18
19 Ruth Ann Terry, M.P.H., R.N. ("Complainant") alleges:

20 **PARTIES**

21 1. Complainant brings this Accusation solely in her official capacity as the
22 Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

23 **License History**

24 2. On or about August 31, 1990, the Board of Registered Nursing issued
25 Registered Nurse License Number 455235 to SOL GIROUARD ("Respondent"). The license
26 was in full force and effect at all times relevant to the charges brought herein and will expire on
27 January 31, 2008, unless renewed.
28

STATUTORY PROVISIONS

3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

6. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, . . .

7. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

(e) Falsify, or make grossly incorrect, grossly inconsistent, or unintelligible entries in any hospital, patient, or other record pertaining to the substances described in subdivision (a) of this section.

8. Code section 4060 states, in pertinent part:

No person shall possess any controlled substance, except that furnished to a person upon the prescription of a physician, dentist, . . . or furnished pursuant to a drug order issued by a certified nurse-midwife . . . , a nurse practitioner . . . , or a physician assistant. . . .

9. Health and Safety Code Section 11173, subdivision (a), provides that no person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact.

10. Code section 125.3 provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

11. **DRUG**

Morphine (MS) is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(M).

FIRST CAUSE FOR DISCIPLINE

(Obtained and Possessed a Controlled Substance)

12. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (a), in that on March 19, 2003, and March 25, 2003, while on duty and employed as a registered nurse at Sharp Coronado Hospital, in San Diego, California, Respondent committed the following acts:

a. Respondent obtained Morphine Sulfate, a Schedule II controlled substance, by fraud, deceit, misrepresentation, or subterfuge, or by a concealment of a material fact, in violation of Health and Safety Code section 11173, subdivision (a), by taking the drug from hospital supplies.

b. Respondent possessed Morphine Sulfate, a Schedule II controlled substance, without a valid prescription, in violation of Code section 4060.

SECOND CAUSE FOR DISCIPLINE

(Incorrect and/or Inconsistent Entries in Hospital and/or Patient Records)

13. Respondent is subject to disciplinary action under Code section 2761, subdivision (a), on the grounds of unprofessional conduct, as defined in Code section 2762, subdivision (e), in that on or about March 19, 2003, and March 25, 2003, while on duty as a registered nurse at Sharp Coronado Hospital, in San Diego, California, Respondent made grossly incorrect or grossly inconsistent entries in hospital and/or patient records in the following respects:

Patient A

a. On March 19, 2003, at 2107 hours, Respondent withdrew 2 mgs. Morphine Sulfate, a controlled substance, from the Pyxis machine, for this patient when there was no physician's order for the Morphine Sulfate. Respondent failed to chart the administration of any portion of the Morphine Sulfate in the patient's Medication Administration Record or otherwise account for the disposition of the 2 mgs. of Morphine Sulfate in any patient or hospital record.

Patient B

a. On March 25, 2003, at 0029 hours, Respondent withdrew 5 mgs. Morphine Sulfate, a controlled substance, from the Pyxis machine, for this patient. Respondent failed to chart the administration of the Morphine Sulfate in the patient's Medication Administration Record or otherwise account for the disposition of the 5 mgs. of Morphine Sulfate in any patient or hospital record.

b. On March 25, 2003, at 2350 hours, Respondent withdrew 5 mgs. Morphine Sulfate, a controlled substance, from the Pyxis machine, for this patient. Respondent failed to chart the administration of the 5 mgs. of Morphine Sulfate in a timely manner in that she charted the administration of the drug on March 26, 2003, at 0530 hours, approximately seven hours later after she withdrew the drug from the Pyxis machine.

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1 THIRD CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct)

3 14. Respondent is subject to disciplinary action under Code section 2761,
4 subdivision (a)(1), on the grounds of unprofessional conduct, as set forth in paragraphs 13 and
5 14, above.

6 PRAYER

7 WHEREFORE, Complainant requests that a hearing be held on the matters herein
8 alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

9 1. Revoking or suspending Registered Nurse Number 455235, issued to
10 SOL GIROUARD;

11 2. Ordering SOL GIROUARD to pay the Board of Registered Nursing the
12 reasonable costs of the investigation and enforcement of this case, pursuant to Code section
13 125.3; and,

14 3. Taking such other and further action as deemed necessary and proper.

15
16 DATED: 3/28/06

17
18 Ruth Ann Terry
19 RUTH ANN TERRY, M.P.H., R.N.
20 Executive Officer
21 Board of Registered Nursing
22 Department of Consumer Affairs
23 State of California
24 Complainant

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